



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0365]

RIN 1625-AA00

Safety Zone; Alaska Marine Highway System Port Valdez Ferry Terminal, Port Valdez; Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone on the navigable waters of Port Valdez within a 200-yard radius of the Alaska Marine Highway System (AMHS) Port Valdez Ferry Terminal. The purpose of the safety zone is to restrict all vessels except AMHS vessels from entering within 200-yards of the AMHS Port Valdez Ferry Terminal whenever an AMHS ferry is underway within 200 yards of the terminal and there is a declared Commercial Salmon Fishery Opener. This safety zone is necessary to provide for the safety of life, property and the environment during periods of vessel traffic congestion during a declared Commercial Salmon Fishery Opener.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0365]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Jason A. Smiley, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Valdez, telephone 907-835-7223, e-mail jason.a.smiley@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

| | |
|------|---------------------------------|
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

A. Regulatory History and Information

On February 1, 2013, we published a notice of proposed rulemaking (NPRM) in the Federal Register (78 FR 7336). We

received no comments on the proposed rule. No public meeting was requested and none was held.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish limited access areas: 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

A representative of the Alaska Marine Highway System requested that the Coast Guard establish a safety zone in the immediate vicinity of the AMHS Port Valdez Ferry Terminal whenever a Commercial Salmon Fishery Opener is declared, because of previous incidents of near collisions in the vicinity of the ferry terminal between AMHS ferry vessels and commercial fishing vessels. During Commercial Salmon Fishery Openers, increased vessel traffic in the vicinity of the AMHS Port Valdez Ferry Terminal adds additional congestion to the waterways and is a cause for navigational safety concerns, especially when the commercial fleet is active along the shoreline adjacent to the AMHS Port Valdez Ferry Terminal.

The Coast Guard began issuing temporary final rules to establish temporary safety zones during Commercial Salmon Fishery Openers in 2010. Because Commercial Salmon Fishery Openers are not announced until the night before the opener, these temporary final rules were issued late in the evening or at night (becoming

effective the following morning) leaving very little time to disseminate news of the safety zone to affected waterway users.

Given that, the Coast Guard proposed to establish a permanent safety zone to restrict non-AMHS vessels from entering within a 200-yard radius of the AMHS Port Valdez Ferry Terminal whenever an AMHS ferry is underway within a 200-yard radius of the AMHS Terminal and there is a declared Commercial Salmon Fishery Opener that includes the navigable waters within 200 yards of the terminal.

C. Discussion of Comments, Changes and the Final Rule

No comments were received. No changes were made to the regulatory text as published in the NPRM.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard enforcement of this safety

zone will be of short duration. The safety zone will be enforced for a limited amount of time, only when there is a declared Commercial Salmon Fishery Opener and there is an AMHS ferry underway within 200 yards of the AMHS Port Valdez Ferry Terminal. Vessels will be able to navigate around the safety zone. Furthermore, vessels may be authorized to transit through the safety zone with the permission of the COTP.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the navigable waters of Port Valdez whenever a Commercial Salmon Fishery Opener is declared and there is an AMHS ferry underway within 200 yards of the AMHS Port Valdez Ferry Terminal.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, only when there is an announced Commercial Salmon Fishery Opener and there is an AMHS ferry underway within 200 yards of the AMHS Port Valdez Terminal. Vessel traffic could pass safely around the safety zone. Before the activation of the zone, we would issue maritime advisories widely available to users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect

on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a permanent safety zone on the navigable waters of Port Valdez. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1712 to read as follows:

§ 165.1712 Safety Zone; Alaska Marine Highway System Port Valdez Ferry Terminal, Port Valdez; Valdez, AK.

(a) Location. The following area is a safety zone: all navigable waters of Port Valdez extending 200-yards in all directions from the edges of the Alaska Marine Highway System Terminal dock located in Port Valdez at 61°07'26"N and 146°21'50"W.

(b) Enforcement period. The rule will be enforced whenever there is an Alaska Marine Highway System Ferry vessel transiting within the area described in paragraph (a) of this section and there is a Commercial Salmon Fishery Opener that includes the navigable

waters within the safety zone. Each enforcement period will be announced by a broadcast notice to mariners when the Commercial Salmon Fishery Opener is announced.

(c) Definitions. The following definitions apply to this section:

(1) The term "designated representative" means any Coast Guard commissioned, warrant or petty officer of the U. S. Coast Guard who has been designated by the Captain of the Port, Prince William Sound, to act on his or her behalf.

(2) The term "official patrol vessel" may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP, Prince William Sound.

(3) The term 'AMHS vessel' means any vessel owned or operated by the Alaska Marine Highway System, including, but not limited to: M/V AURORA, M/V CHENEGA, M/V COLUMBIA, M/V FAIRWEATHER, M/V KENNICOTT, M/V LECONTE, M/V LITUYA, M/V MALASPINA, M/V MATANUSKA, M/V TAKU and M/V TUSTUMENA.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the requirements in paragraphs (d)(2) through (5) of this section, apply.

(2) No vessels, except for AMHS ferries and vessels owned or operated by AMHS will be allowed to transit the safety zone without the permission of the COTP Prince William Sound or the designated representative during periods of enforcement.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel or other official patrol vessel by siren, radio, flashing light or other means, the operator of the hailed vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area may contact the COTP or the designated representative via VHF channel 16 or 907-835-7205 (Prince William Sound Vessel Traffic Service) to request permission to do so.

(5) The COTP, Prince William Sound may be aided by other Federal, state, borough and local law enforcement officials in the enforcement of this regulation. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Dated: January 9, 2013

Benjamin J. Hawkins
Commander, U.S. Coast Guard
Captain of the Port, Prince William Sound

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